IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.1997 of 2003

Sasireka .. Petitioner

vs.

1.Govindarajan

2.The State Rep by
The Inspect of Police,
All Women Police Station,
Ootacamund, Nilgiris,
Crime No.7 of 2001 .. Respondents

Prayer: This Revision petition has been preferred against judgment dated 26.09.2003 in C.ANo.16 of 2003 passed by the learned Sessions Judge, Nilgiris at Ootacamund, setting aside the judgment made in C.C.No.6 of 2002 on the file of the learned Judicial Magistrate, Ootacamund, dated 10.02.2003.

For Petitioner : Mr.A.M.Rahamath Ali
For Respondents : Mr.S.Govindarajan,
Legal Aid Counsel (for R1)

Mr.V.R.Balasubramanian
Additional Public Prosecutor (for R2)

ORDER

This revision has been preferred against the judgment of the learned Sessions Judge, Nilgiris, in C.A.No.16 of 2003, which had arisen out of the judgment in C.C.No.6 of 2002 on the file of the Judicial Magistrate, Ootacamund. The accused faced a charge under section 498A & 494 IPC and under Section 4 of Dowry Prohibition Act.

2.The trial Court after taking cognizance of the offence had issued summons and on appearance of the accused furnished copies under Section 207 Cr.P.C., and when charges were framed and questioned, the accused pleaded not guilty.

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3.Before the trial Court P.Ws.1 to 14 were examined and Ex.Ps.1 & 2 were marked.

4.P.W.1 is the complainant. According to her, marriage between the accused and her took place on 12.12.1999 at Ootacamund and that it was an arranged marriage and that after the marriage they lived together at the place called Muthorai Palada, but subsequently their relationship got strained and the accused used to treat her cruelly and demanded more dowry and that he took her to the parents' house and left her there with a condition that only if her father pays Rs.1,00,000/- she can come to his house. It is the definite case of P.W.1 that the accused had married another woman by name Gowry at Muthorai Palada for the second time on 24.7.2001 and that she (P.W.1) has preferred a complaint with the police on 13.6.2001 relating to the second marriage of the accused. Ex.P.1 is the complaint preferred by her.

5.P.W.2 is the mother of P.W.1. She would depose that at the time of marriage between the accused and P.W.1, she had presented 21 soverigns of jewels and that they lived together at Muthorai Palada and that P.W.1 had often complained to her about the dowry harassment meeted out by her at the hands of the accused and that on 15.3.2001 the accused had approached P.W.1 and left her in his house by stating that only if she brings Rs.1,00,000/- she can enter into his house. He would further depose that one day the accused had through phone demanded Rs.1,00,000/- towards dowry and that his daughter P.W.1 has preferred the complaint with the police.

6.P.W.3 is the father of P.W.1. He has also corroborated the evidence of P.W.1 & P.W.2.

7.P.W.4 has corroborated the evidence of P.W.1 to P.W.3 on the aspect of demand of dowry by the accused. He would further say that he came to know that the accused had committed the offence of bigamy on 27.4.2001.

8.P.W.5 to P.W.12 have failed to support the case of the prosecution. Hence they were treated as hostile witnesses.

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9.P.W.13 is the Sub-Inspector of Police, who had registered the case under Cr.No.263 of 2001 on the basis of the complaint preferred by P.W.1.

10.P.W.14 is the Investigating Officer in this case. After following the formalities and after completing his

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investigation, P.W.14 has filed the charge sheet under Section 498A and 494 IPC and under Section 4 of Dowry Prohibition Act.

11.When incriminating circumstances were put to the accused, he would deny his complicity with the crime. On the side of the accused Ex.D.1 to Ex.D.3 were marked.

12.After going through the evidence both oral and documentary, the learned Judicial Magistrate has held that the charge against Section 498A IPC and under Section 34 of Dowry Prohibition Act have been proved against the accused beyond any reasonable doubt and accordingly convicted and sentenced the accused to undergo 6 months RI under Section 498A IPC and slapped a fine of Rs.1,500/- with default sentence and convicted and sentenced the accused under Section 4 of the Dowry Prohibition Act to undergo 6 months RI and a fine of Rs.1,500/- with default sentence. The learned Judicial Magistrate has acquitted the accused for the offence under Section 494 IPC holding that the charge under Section 494 IPC has not been proved by the prosecution beyond any reasonable doubt.

13.Against the findings of the learned trial Judge, the accused has preferred an appeal before the learned Sessions Judge, Nilgiris in C.A.No.16 of 2003. After going through the evidence both oral and documentary let in on both sides, the learned first appellate Court has allowed the appeal holding that the charges levelled against the accused under Section 498A IPC and under Section 4 of the Dowry Prohibition Act were also not proved beyond any reasonable doubt and accordingly acquitted the accused from all the charges levelled against him, which necessitated the accused to approach this Court by way of this revision.

14.Heard the learned counsel Thiru.A.M.Rahamath Ali appearing for the revision petitioner, and Thiru.S.Govindarajan learned Legal Aid Counsel appearing for 1st respondent and learned Additional Public Prosecutor Mr.Mr.V.R.Balasubramanian for 2nd respondent and considered their respective submissions.

15.The point for determination in this case is whether there is sufficient materials produced by the prosecution to warrant conviction against the accused under Section 498A IPC and under Section 4 of the Dowry Prohibition Act?

16.The Point:- The reasoning given in the judgment of the first appellate Court for acquitting the accused from the charges under Section 498A IPC and under Section 4 of the Dowry Prohibition Act is that P.W.1, the complainant, has preferred an earlier complaint against the same accused and his kith and kin,

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which was taken on the file by the learned Judicial Magistrate in C.C.No.229 of 2001 on the file of the Judicial Magistrate, Ootacamund. The said complaint was marked as Ex.D.2 through P.W.1 on the side of the accused. Ex.D.2-complaint was preferred under Section 200 of Cr.P.C., by the complainant Mrs.Sasirekha against her husband/accused herein and one Gowry and 6 others, who have been arraigned as A1 to A8 in Ex.D2-complaint. The said complaint was preferred in the year 2001 itself i.e., even before filing the present complaint. In the present complaint the complainant would allege about the dowry harassment to the effect that the accused left her in her parents' house and told her that unless she brings Rs.1,00,000/- towards dowry she cannot enter into his house. The said complaint was registered under Section 498A, 494 IPC and under Section 4 of the Dowry Prohibition Act, whereas in the Ex.D.2-complaint, which was preferred by the same complainant earlier to the present complaint, there is no whisper about any dowry harassment by the present accused. But it is pertinent to note that there is an allegation of bigamy in both the complaints. Only on this point that there was no whisper about any dowry harassment or demand of dowry and cruelty in the earlier complaint-Ex.D.2, the learned Sessions Judge has come to the conclusion that no reliance can be attached to the evidence of P.W.1 in the absence of an earlier complaint about cruelty and demand of dowry in Ex.D.2-complaint. Under such circumstances, I do not find any reason to interfere with the well considered findings of the learned first appellate Court in C.A.No.16 of 2003 on the file of the Sessions Judge, Nilgris at Ootacamund. Point is answered accordingly.

17. In the result, the revision petition is dismissed confirming the judgment in C.A.No.16 of 2003 on the file of the learned Sessions Judge, Nilgiris at Ootacamund.

The Member Secretary of the Tamil Nadu Legal Services Authority is directed to pay Rs.3,000/- (Rupees Three thousand) only towards the fees for the Legal Aid Counsel Mr.S.Govindarajan, whose services in this case are recorded with appreciation.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Judicial Magistrate, Ootacamund.

2.-do- through The Chief Judicial Magistrate, Nilgiris.

3.The Sessions Judge, Nilgiris at Ootacamund

4.The Inspector of Police,
All Women Police Station, Ootacamund.

5.The Public Prosecutor, High Court, Madras.

6.The Member Secretary,
Tamil Nadu Legal Services Authority, Chennai.

+1cc to Mr.S.Govindarajan, Advocate Sr 33469

RS (CO)
km/20.6.

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